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**CITY OF HOMER
HOMER, ALASKA**

City Manager

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RESOLUTION 16-040

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA, APPROVING A MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF HOMER AND HOMER ELECTRIC ASSOCIATION REGARDING THE DEDICATION OF A RIGHT OF WAY BY HOMER ELECTRIC ASSOCIATION TO THE CITY OF HOMER SO LONG AS THE CITY TAKES RESPONSIBILITY FOR ANY ENVIRONMENTAL CONTAMINATION RESULTING FROM THE CITY'S EXCAVATION ON THAT RIGHT OF WAY.

WHEREAS, The City Council accepted and appropriated a Legislative Grant (Ordinance 14-42(S)) in the amount of \$1,430,000 for the Waddell Road Improvements; and

WHEREAS, The project requires the acquisition of a right of way from Homer Electric Association ("HEA") comprised of Lot E, Heath Street Replat, T6S, R13W, Sec 20 [3833 Lake Street] and Lot 2, Waddell Park 2000, T6S, R13W, Sec. 20 [3768 Waddell Way] ("hereafter collectively referred to as the "Property"); and

WHEREAS, The Property is part of a pending re-plat that dedicates the right-of way to the City for the construction of a road and water line; and

WHEREAS, There are contaminated soils and water on portions of the Property that HEA continues to monitor and submit regular status reports to the Alaska Department of Environmental Conservation ("ADEC") regarding the contamination; and

WHEREAS, ADEC requires approval prior to any disposal or movement of residual soil or groundwater contamination and HEA seeks assurance from the City that it will obtain such ADEC approval prior to moving or disposing of any of the contaminated soil; and

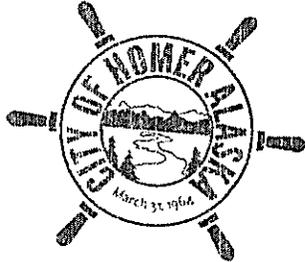
WHEREAS, The City received a cost estimate from Cook Inlet Environmental, Inc. for (1) the creation of a work plan meeting ADEC requirements and (2) on-site monitoring of the implementation of that work plan, and the estimated cost is within the Project budget; and

WHEREAS, The creation of and compliance with the work plan and the recommended on-site monitoring greatly reduces the risk of contamination caused by the City's excavation efforts.

42 NOW, THEREFORE, BE IT RESOLVED that the Homer City Council hereby approves the
43 Memorandum of Agreement between the City of Homer and HEA regarding the Property, a
44 copy of which is attached and incorporated herein.
45

46 PASSED AND ADOPTED by the Homer City Council this 11th day of April, 2016.
47

48 CITY OF HOMER



54 David G. Lewis
55 DAVID G. LEWIS, MAYOR PRO TEMPORE

56 ATTEST:

57 Jo Johnson
58 JO JOHNSON, MMC, CITY CLERK

59
60 Fiscal Note:

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("Agreement") is entered into effective as of April 6, 2016 (the "Effective Date"), by and between Homer Electric Association, Inc. ("HEA"), an Alaska electric cooperative, and the City of Homer (the "City"), an Alaska municipality within the Kenai Peninsula Borough. In this Agreement, HEA and the City may be referred to collectively as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, HEA owns certain property in Homer, Alaska described as Lot E, Heath Street Replat, T6S, R13W, Sec. 20 [3833 Lake St.] and Lot 2, Waddell Park 2000, T6S, R13W, Sec. 20 [3768 Waddell Way], collectively, the "Property", which is part of a pending re-plat to dedicate right-of way (the "Dedicated Area") to allow the City to construct a through way and water line (the "Project"); and

WHEREAS, the City has proposed to re-plat the Property and HEA is agreeing to that re-plat, and the associated vacation of the current easement on the property directly north of the Dedicated Area, subject to the conditions and representations contained in this Agreement; and

WHEREAS, portions of the Property, including sections beneath the Dedicated Area, consist of contaminated soils and water (Alaska Department of Environmental Conservation "ADEC" Hazard ID No. 23457), subject to certain institutional controls as described in the ADEC [Horwath] letter dated March 16, 2016, namely, that "residual soil or groundwater contamination may not be moved or disposed without prior ADEC approval"; and

WHEREAS, the contamination found on the Property continues to be monitored by HEA with regular status reports provided to ADEC resulting in no further action or cost on the part of HEA, beyond the continued monitoring; and

WHEREAS, the City is willing to assume the potential expenses of excavating the contaminated soil and groundwater and has agreed to pay for any additional remediation costs or monitoring wells, beyond the current stable monitoring of the Property caused, or deemed to have been caused, by the Project, and

WHEREAS, the City is willing to conduct additional remediation required by ADEC as a result of the Project and assume the cost thereof, including without limitation, excavation and disposal of suspect soil and ground water, and monitoring wells in addition to those required for the current stable monitoring of the Property; and

WHEREAS, HEA and the City have agreed to certain other specific measures, as set forth below, to be taken during the Project.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements herein contained, the receipt and sufficiency of which is hereby

acknowledged, HEA and the City, each intending to be legally bound hereby, agree as follows:

AGREEMENT:

1. **Monitored Site.** The City acknowledges that the Project area encompasses a residual contaminated site being monitored by ADEC and that HEA presently has in place an ongoing monitoring process that will, at some point in the future, complete ADEC remediation requirements, without any additional action by HEA. The City will be responsible for obtaining all necessary permits from ADEC to work on the Project during all phases of construction of the Project, including any permits to discharge or dispose of wastewater, remove or replace soils and on site testing or documentation of activities.
2. **City Expenses.** The City hereby agrees to pay the expenses of or reimburse HEA for any additional environmental remediation costs caused by the Project. The City shall reimburse such expenses within thirty (30) days of HEA providing an invoice and documentation of costs. Any new remediation actions required by ADEC in response to the City's construction of the Project beyond the current monitoring program will be deemed to have been caused by the City and Project.
3. **Access.** HEA will allow the City or its contractor to enter the Property for the purposes of constructing the Project. The City shall indemnify, defend and hold harmless, HEA and its respective employees, agents and representatives, from and against any and all claims, liabilities, losses, or damages whatsoever, arising from any negligent or wrongful act committed by the City or its contractors while on the Property in connection with the performance of the Project.
4. **ADEC Work Plan.** ADEC requires a written work plan in order to begin the Project. This plan requires the use of a Qualified Environmental Professional who will be provided by the City. The City or its contractors will provide HEA's employee, Bruce Linton, with all work plans and other documentation that the City submits to ADEC for review. The City will be responsible for providing all ADEC required work plans to ADEC and abiding by their respective requirements.
5. **Well Decommissioning.** HEA will be responsible for the cost of decommissioning groundwater monitoring well TMW-1. HEA has provided the written work plan to ADEC, prior to decommissioning the well. HEA and the City will use their best efforts to coordinate the decommissioning of the well and the construction of the Project.
6. **Severability.** If any provision of this Agreement is deemed invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.

7. Entire Agreement. This Agreement constitutes the entire understanding of the Parties as to its subject matter. No amendment to this Agreement will be effective unless it is in writing and signed by both parties.
8. Non-waiver. The failure of any Party to enforce any provision of this Agreement shall not be construed as a waiver of that provision or any other provisions of this Agreement.
9. Successors and Assigns. This Agreement shall be binding upon the successors and assigns of the Parties. No assignment or delegation of the obligations in this Agreement will release the assigning Party without the prior written consent of the other Parties.
10. Execution. The signatories hereto represent that they are familiar with the provisions of this Agreement and that they are fully authorized to enter into this Agreement on behalf of and to bind the Party for who they are a signatory. This Agreement may be executed in two or more signature counterparts, each of which shall constitute an original, but all of which, taken together, shall constitute one and the same instrument.
11. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Alaska and any claim brought under this Agreement will be submitted in the courts of the Third Judicial District at Kenai.

IN WITNESS THEREOF, the Parties through their authorized representatives have executed this Agreement in counterparts on the dates set forth under their respective signatures attached hereto.

Agreed to and accepted:

Homer Electric Association, Inc.


 Name: Bradley P. Janorschke
 Title: General Manager

April 6, 2016
 Date

City of Homer


 Name: Katie Koester
 Title: City Manager

4-11-16
 Date



City of Homer

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Memorandum 16-064

TO: Honorable Mayor Wythe and Homer City Council
FROM: Katie Koester, City Manager
DATE: April 6, 2016
SUBJECT: Waddell Way: Resolution 16-064

As Council is aware, Public Works has moved forward with design, engineering, land acquisition and awarding the contract for construction of Waddell Way, a priority project that was funded in a 75/25 split between state legislative grant and HART funds. In order to complete the project, the road crosses a section of HEA land. We have known from the beginning of the project that the land was a contaminated site and has monitoring wells. This is not uncommon in construction sites in developed areas. The City initiated a replat in order to procure an easement across HEA's land. Late in the game, HEA notified us that their signing of the plat was contingent upon the City signing a memorandum of agreement (MOA) regarding the responsibility for soils disturbed by the site. Our attorneys have reviewed the MOA, amended it, and we have a document before you that both parties can agree on.

The original budget for the project included dealing with contaminated soils on site. However, the contamination is such that it will require more aggressive remediation and it is important to understand both the magnitude of the potential risk we are assuming and take proper steps to lessen the long term exposure. Therefore, City Administration has gathered additional information including a third party estimate for the maximum potential cost of mitigating the contamination and restraining any future spread of contamination. Combined potential cost for excavating the soil, onsite monitoring, and disposing of any contaminated soil is around \$115,000. This is well within the contingency of the project - the winning bid came in \$250,000 under budget. It is important to note this estimate is a 'worst case scenario' and measures are being taken, like boring instead of trenching, to reduce the disturbance of contaminated soils and control costs. The City is developing a work plan that crosses all the t's and dots all the i's. This level of caution protects the City and the environment and gives me comfort in signing the MOA assuming future responsibility for contamination as a result of the disturbance; we are doing everything to make spread of that contamination highly unlikely. The City Attorney will be at Monday's Council meeting to answer any questions you may have.